

REMARKS/ARGUMENTS

In the Claims:

Rejection of Claims 75, 78, 80, 85, 106, 107, 114, 115, 134, 135, 138, 152, 153 and 156 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 75, 78, 80, 85, 106, 107, 114, 115, 134, 135, 138, 152, 153 and 156 under 35 U.S.C. § 102(b) as being anticipated by the Silipos Silosheath product. For the reasons set forth below, the rejection is respectfully traversed.

The Examiner bases the present rejection particularly on a Silipos Silosheath® product provided by Applicant in a November 06, 2000 IDS, as well as on a reference to a Silipos Silosheath product in a June 04, 2004 IDS. Applicant respectfully submits that there is no evidence that the Silosheath product referred to by the Examiner as Silosheath #12155 was in existence prior to the critical date of the present application. Applicant further submits that the Examiner has misinterpreted the statement made in the June 04, 2004 IDS.

First, Applicant clearly stated in the November 06, 2000 IDS that, while Silipos *alleged* the Silosheath #12155 product to be the same as the Silosheath #1215 product listed on the 1993 invoice - Applicant has no evidence that such is true. In fact, Applicant is unaware of any Silosheath products lacking gel on the exterior thereof during the relevant timeframe. Further, there is no reason to believe that the Silosheath #12155 product was made prior to 1995, because Silipos admittedly did not switch to a five digit part number until at least that date.

More importantly, the packaging for the Silosheath #12155 product specifically displays the notation "SADMERC code effective 1/1/97". This actually suggests that the Silosheath #12155 product was not manufactured until sometime after or, more unlikely, shortly before, 1/1/97. That is, it would be illogical to place non-applicable language on the packaging. Therefore, it makes sense that such language would not appear on the packaging for the Silosheath #12155 product until after the SADMERC code went into effect or, assuming that Silipos was sufficiently diligent, very shortly before the code went into effect. However, under no circumstances would it be reasonable to assume that Silipos began placing the recited language on the Silosheath #12155 product packaging prior to the 3/05/1995 critical date of the present application, as that date is almost two years prior to the effective date specified by the packaging language.

Thus, even if the Silosheath #12155 product is devoid of gel on its exterior, there is no evidence - other than the self-serving allegations of Silipos - that this particular Silosheath was in existence until well after the critical date of the present application. No dated specimen of a Silosheath #1215 product (referred to in the invoice) without exterior gel was ever provided to Applicant for comparison. Nor is Applicant in possession of any photographs of such a Silosheath #1215 (assuming that the disputed features could even be discerned from a photograph). Further, Applicant's own knowledge of the Silosheath product in existence during the relevant time period suggests the presence of exterior gel.

There is simply no qualifying evidence that a Silosheath #12155 product like that in the Examiner's possession was in existence prior to 1997. Consequently, the Silosheath #12155 product cannot be relied on as anticipatory prior art.

The Examiner also asserts that Applicant equates the Silosheath #12155 *product* with the earlier Silosheath #1215 *product* in the June 04, 2004 IDS. Applicant respectfully suggests that the Examiner is misreading the statement appearing in the IDS. All Applicant stated was that *Item No.* 12155 corresponds with *Item No.* 1215. More specifically, Applicant was merely clarifying that old *Item No.* 1215 was changed to new *Item No.* 12155, but that both item numbers referred to a Silosheath product in size Medium/Regular. However, Applicant never stated or admitted in any way that the actual Silosheath *product* with which the 1215 *Item No.* was associated is the same as the *product* later associated with updated *Item No.* 12155. This is an important distinction. In fact, a reading of the Statement of Relevancy appearing in the November 06, 2000 IDS clearly illustrates Applicant's belief that the Silosheath #12155 product, in the form supplied to the Examiner, was *not* in existence in 1993 (and not likely until 1997).

Therefore, it can be seen from the foregoing discussion that there is absolutely no qualifying evidence to prove that the Silosheath #12155 product, in the form possessed by the Examiner, is the same *product* referred to as the Silosheath #1215 in 1993. In fact, the best evidence available with respect to the Silosheath #12155 product suggests it was not manufactured until early 1997 - which is almost two years past the critical date of the present application. Further, Applicant's own experience with the

Silosheath products, such as the older Silosheath #1240¹ product previously provided to the Examiner by Applicant, would suggest otherwise. Consequently, Applicant respectfully submits that the Silosheath #12155 product cannot support a rejection of claims 75, 78, 80, 85, 106, 107, 114, 115, 134, 135, 138, 152, 153 and 156 under 35 U.S.C. § 102(b).

Rejection of Claims 88, 89, 126, 127, 136, 137, 139, 140, 154, 155, 157 and 158 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 88, 89, 126, 127, 136, 137, 139, 140, 154, 155, 157 and 158 under 35 U.S.C. § 103(a) as being unpatentable over the Silipos Silosheath #12155. The deficiencies of the Silipos Silosheath #12155 as a reference against the present invention have been discussed in detail above. As Applicant does not believe the Silosheath #12155 to teach or suggest the independent claims of the present application, claims 88, 89, 126, 127, 136, 137, 139, 140, 154, 155, 157 and 158, which depend respectively therefrom, are also allowable.

Rejection of Claims 76, 77, 80, 92-94, 96, 99, 102, 103, 107, 110, 111, 115, 118-121, 124, 125, 128-133, 141-151 and 159-165 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 76, 77, 80, 92-94, 96, 99, 102, 103, 107, 110, 111, 115, 118-121, 124, 125, 128-133, 141-151 and 159-165 under 35 U.S.C. § 103(a) as being unpatentable over the Silipos Silosheath® in view of Mushenko et al. (SU 1739990 A1). Mushenko et al. does nothing to overcome the deficiencies of the

¹ It should be noted that the only stated differences between the Silosheath #1215 and the Silosheath #1240 is the thickness of the gel layer (i.e., regular cushion vs. double cushion) and the size (Medium/Regular vs. Short/Regular). (Silipos Domestic Price List)

Silosheath #12155 product, as set forth above. Consequently, Applicant respectfully submits that the Silosheath #12155 in view of Mushenko et al. cannot support a rejection of claims 76, 77, 80, 92-94, 96, 99, 102, 103, 107, 110, 111, 115, 118-121, 124, 125, 128-133, 141-151 and 159-165 under 35 U.S.C. § 103(a).

CONCLUSION

Applicant has provided further evidence that the Silipos Silosheath #12155 product does not qualify as prior art against the claims of the present application. Therefore, Applicant respectfully submits that the present application is now in condition for allowance, and entry of the present remarks and allowance of the application as previously amended is earnestly requested.

If, however, the Examiner maintains his rejection, entry of the present response is respectfully requested as reducing the number of issues and placing this application in better condition for appeal. Telephone inquiry to the undersigned in order to clarify or otherwise expedite prosecution of the present application is respectfully encouraged.

Respectfully submitted,

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